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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054629
Party	Plaintiff Sheltered Wings, Inc.
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Date	11/13/2013
Attachments	Notice 11-13-2013.pdf(604787 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,904,929)	
SHELTERED WINGS, INC.)	
Petitioner,)	
v.)	
WOHALI OUTDOORS, LLC)	
Respondent.)	

Cancellation No. 92054629

NOTICE REGARDING WOHALI’S REQUESTED SUSPENSION

Petitioner, Sheltered Wings, Inc., writes to inform the Board that Petitioner has filed an action for trademark infringement and cancellation of the registration at issue in this proceeding in the United States District Court for the Western District of Wisconsin. A copy of Petitioner’s complaint, filed yesterday, is attached as **Exhibit 1** (*Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Case No. 13-cv-796 (W.D. Wis.)).

On November 1, 2013, Respondent, Wohali Outdoors, LLC, filed a motion to suspend this cancellation proceeding pending the resolution of a complaint alleging non-trademark claims that Wohali filed in state court in Tulsa, Oklahoma on October 31, 2013. The Oklahoma state court case will not resolve the trademark issues between the parties and thus does not provide an appropriate basis for suspension of this cancellation proceeding. Petitioner would have opposed Wohali’s motion for suspension in view of the Oklahoma litigation.

However, Petitioner’s Wisconsin case for trademark infringement and cancellation of registration no. 3,904,929 directly addresses the issues in this cancellation proceeding. Petitioner

thus does not oppose suspension of this cancellation proceeding, and requests that this proceeding be suspended in view of the Wisconsin litigation, *Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Case. No. 13-cv-796 (W.D. Wis.).

Petitioner maintains its position that the Oklahoma action does not provide a basis for suspending this proceeding.

Dated: November 13, 2013.

Respectfully submitted,

SHELTERED WINGS, INC.

By: /Jennifer L. Gregor/
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was served by First Class Mail, postage prepaid, and email this 13th day of November 2013 upon the following:

Steven M. Harris (steve.harris@1926blaw.com)
S. Max Harris (max.harris@1926blaw.com)
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/Jennifer L. Gregor/
Jennifer L. Gregor

10427942.1

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

Sheltered Wings, Inc.,

Plaintiff,

v.

Case No. 13-CV-796
(related Case No. 11-CV-300-BBC)

Wohali Outdoors, LLC,

Defendant.

Complaint

Sheltered Wings, Inc., (“Sheltered Wings”), by its attorneys Godfrey & Kahn, S.C., brings this Complaint against the defendant Wohali Outdoors, LLC (“Wohali”):

Introduction

1. This is an action for trademark infringement, arising from Wohali’s adoption and use of the mark STEEL EAGLE for binoculars and other optical devices.

2. This matter was before this Court in 2011, Case No. 11-CV-300, assigned to Judge Crabb. That matter was voluntarily dismissed without prejudice when Sheltered Wings sought to resolve the material trademark issues in the Trademark Trial and Appeal Board (TTAB). Although the TTAB proceeding is near its conclusion, Wohali has sought to disrupt that proceeding with a baseless non-trademark complaint against Sheltered Wings filed in Oklahoma state court. Sheltered Wings brings this action, essentially reinstating the 2011 case, to secure an expeditious and definitive resolution of the trademark issues between the parties.

3. Sheltered Wings has used the mark EAGLE OPTICS since 1987 in connection with selling binoculars and other optics. Sheltered Wings uses EAGLE OPTICS both as the name of its retail store, and as a brand for its optics products. In the 25 years that Eagle Optics



has been in business, and particularly in the last ten years, the company and the EAGLE OPTICS brand has grown into a multi-million dollar company and a well-known optics brand. Sheltered Wings has maintained federal trademark registrations for EAGLE OPTICS and for GOLDEN EAGLE with priority dates much earlier than Wohali's adoption of the mark STEEL EAGLE.

4. Wohali was founded and began business only in 2009. Wohali filed an intent-to-use application for registration of STEEL EAGLE on March 12, 2009, and it began using STEEL EAGLE for binoculars and riflescopes on October 21, 2009.

5. Sheltered Wings's rights to EAGLE OPTICS are long prior to Wohali's alleged rights. Because Wohali's use of the mark STEEL EAGLE is likely to damage Sheltered Wings, Sheltered Wings brings this action for trademark infringement. Sheltered Wings also seeks cancellation of the Wohali's erroneously issued trademark registration for STEEL EAGLE.

Parties

6. Sheltered Wings is a Wisconsin corporation doing business as Eagle Optics with its principal place of business in Middleton, Wisconsin.

7. Wohali is an Oklahoma limited liability company located at 1300 N. Industrial Blvd., Claremore, Oklahoma, 74017. Wohali is engaged in the business of providing outdoor gear including rain wear, fishing rods, binoculars, and spotting scopes. Wohali promotes, offers and attempts to sell its goods nationwide, including in Wisconsin.

Jurisdiction and Venue

8. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. §§ 1051-1127, and under the common law.

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. 1338(a) (trademarks), and 15 U.S.C. § 1121 (trademarks).

10. This Court has supplemental jurisdiction over Sheltered Wings's state law claim under 28 U.S.C. § 1367(a) because that claim arises from the same operative facts as those alleged in Sheltered Wings' federal claims.

11. This Court has personal jurisdiction over the defendant Wohali under Wis. Stat. § 801.05(1), (3) and (4) because Wohali is engaged in substantial and not isolated business in this District, actions giving rise to this lawsuit have occurred in this District, and Defendant has caused damage to Sheltered Wings in this District and goods of the Defendant were used in the District in the ordinary course of trade.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391.


Background Facts

13. For years, Sheltered Wings has been engaged in the business of providing optics products, including binoculars, spotting scopes, monoculars, and related equipment.

14. Since at least as early as 1987, Sheltered Wings has continuously used the term EAGLE in its trademarks for its optics products.

15. Sheltered Wings is the owner of the following United States trademark registrations for its trademarks including the term EAGLE:

Mark/Reg. No.	Application and Registration Dates	Goods and Services	First Use in Commerce in Registration
GOLDEN EAGLE Reg. No. 3,787,739	App: Dec. 8, 2006 Reg: May 11, 2010	Class 9: Binoculars	February 2010
EAGLE OPTICS Reg. No. 2,886,199	App: Oct. 5, 2000 Reg: Sep. 21, 2004	Class 9: Binoculars, spotting scopes, and telescopes, all for use in bird watching, and storage cases therefore	April 1, 1996

Mark/Reg. No.	Application and Registration Dates	Goods and Services	First Use in Commerce in Registration
 Reg. No. 3,192,083	App: Aug. 24, 2005 Reg: Jan. 2, 2007	Class 9: Binoculars, spotting scopes, telescopes, and storage cases therefore, all for use in birdwatching Class 35: Retail store, mail order and online retail store services featuring binoculars, spotting scopes, telescopes, and storage cases therefore, all for use in birdwatching	December 2001 1987

The registrations for the marks listed above (the “EAGLE Marks”) are valid and subsisting.

Additionally, Registration Nos. 2,886,199 and 3,192,083 are incontestable in accordance with the provisions of Sections 8 and 15 of the United States Trademark Act. (15 U.S.C. §§ 1058 and 1065).

16. Sheltered Wings has long owned valuable goodwill represented by its EAGLE Marks.

17. By virtue of Sheltered Wings’ extensive use, advertising, and promotion of its EAGLE Marks, and long before the filing date of Wohali’s application to register STEEL EAGLE, the EAGLE Marks became extremely well known and acquired a strong secondary meaning signifying Sheltered Wings.

18. Wohali was issued Registration No. 3,904,929 for the trademark STEEL EAGLE for “Magnifying optical equipment, namely, rifle scopes and binoculars,” in Class 9 (the “STEEL EAGLE Registration”), which registration was granted on January 11, 2011, based on an intent-to-use application filed on March 12, 2009.

19. Wohali did not use the trademark STEEL EAGLE for any goods or services prior to October 21, 2009, the date of first use identified in the STEEL EAGLE Registration.

20. Shortly after learning of the STEEL EAGLE Registration, Sheltered Wings sued Wohali for trademark infringement in this Court on April 25, 2011, Case No. 11-CV-300, assigned to Judge Crabb. That action was voluntarily dismissed after Sheltered Wings discovered that Wohali had only limited sales of infringing binoculars. Sheltered Wings informed Wohali and the Court that it intended to bring the issue of the parties' competing trademark claims to the Trademark Trial and Appeal Board. Over Wohali's objection, the Court dismissed the action without prejudice on July 25, 2011, acknowledging that Sheltered Wings had preserved the right to reinstate the action.

21. Sheltered Wings filed a cancellation petition in the TTAB on October 10, 2011.

22. On November 3, 2011, Wohali filed a new trademark application (serial no. 85/464,085) to register STEEL EAGLE for pants, rain wear, and shirts.

23. On July 23, 2012, Wohali filed yet another trademark application (serial no. 85/684,377) to register STEEL EAGLE for jackets and vests.

24. Sheltered Wings filed oppositions in the TTAB against the registration of Wohali's November 3, 2011 and July 23, 2012 trademark applications; these opposition proceedings are currently suspended pending the outcome of the TTAB cancellation proceeding.

25. The parties conducted extensive discovery and motion practice in the TTAB cancellation proceeding. After more than two years, the proceeding is now in Wohali's testimony period, which means that the proceeding would ordinarily be nearing its conclusion.

26. Wohali has now just filed an action against Sheltered Wings in Oklahoma state court, alleging that Sheltered Wings has improperly interfered with Wohali's business relations

by asserting its rights in the Trademark Office. The Oklahoma complaint is attached as Exhibit A. The Oklahoma complaint, filed October 31, 2013, does not assert Wohali's trademark rights. The complaint is carefully pleaded to avoid federal jurisdiction, by, for example, pleading that the damage to Wohali is "greater than ten thousand dollars, and less than the amount required for diversity jurisdiction."

27. Wohali has moved the TTAB to suspend the cancellation proceeding, pending the resolution of the Oklahoma state court action. The Oklahoma state case, however, does not address the question of whether Wohali is entitled to the U.S. Registration No. No. 3,904,929.

28. Sheltered Wings will defend itself in the Oklahoma case. But the resolution of the Oklahoma case will not resolve the trademark issues between the parties.

29. The Oklahoma state court action was filed in bad faith for the purpose of forestalling resolution of the issue presented in the TTAB cancellation proceeding. Accordingly, Sheltered Wings files this action reinstating its trademark infringement claims against Wohali so that those issues can be resolved expeditiously and definitively.

**First Cause of Action:
Federal Trademark Infringement**

30. Paragraphs 1 through 29 are incorporated by reference.

31. Use by Wohali of the trademark STEEL EAGLE is likely to confuse the purchasing public as to the source of Wohali's goods or to cause mistake or to deceive as to an affiliation, connection, or association with Sheltered Wings in violation of the United States Trademark Act (15 U.S.C. § 1114).

32. Sheltered Wings is entitled to injunctive relief and money damages as a result of Wohali's infringement of Sheltered Wings's registered trademarks.

**Second Cause of Action:
Unfair Competition**

33. Paragraphs 1 through 32 are incorporated by reference.

34. Use by Wohali of STEEL EAGLE and GOLDEN EAGLE on its goods and its conduct in seeking to adopt for its goods marks used by Sheltered Wings is likely to cause confusion or mistake, or to deceive consumers in in violation of 15 U.S.C. § 1125(a).

35. Sheltered Wings is entitled to injunctive relief and money damages as a result of Wohali's unfair competition.

**Third Cause of Action:
Cancellation of Registration**

36. Paragraphs 1 through 35 are incorporated by reference.

37. Sheltered Wings is being damaged by Wohali's STEEL EAGLE Registration because, among other things, the United States Trademark Office has refused registration of Sheltered Wings' pending application Serial No. 85/095,903 for the mark EAGLE for binoculars, riflescopes, spotting scopes, and telescopes in Class 9 in view of the STEEL EAGLE Registration.

38. Sheltered Wings believes that it is being damaged and will continue to be damaged by the STEEL EAGLE Registration, U.S. Registration No. 3,904,929, unless this Court cancels that registration pursuant to 15 U.S.C. § 1119.

**Fourth Cause of Action:
Declaration of Unregistrability**

39. Paragraphs 1 through 38 are incorporated by reference.

40. Sheltered Wings will be damaged by Wohali's use or registration of the mark STEEL EAGLE on pants, rain wear, shirts, jackets, and vests, as identified in Wohali's pending trademark application serial numbers 85/464,085 and 85/684,377.

41. A legal controversy exists between Sheltered Wings and Wohali regarding the registrability of Wohali's pending trademark application serial numbers 85/464,085 and 85/684,377. This controversy is ripe for adjudication.

42. In accordance with 28 U.S.C. §§ 2201 and 2202, Sheltered Wings seeks a declaration from the Court that Wohali's pending trademark application serial numbers 85/464,085 and 85/684,377 are not registrable.

**Fifth Cause of Action:
Common Law Trademark Infringement**

43. Paragraphs 1 through 42 are incorporated by reference.

44. Use by Wohali of the trademark STEEL EAGLE for the goods identified in its registration is likely to confuse the purchasing public as to the source of Wohali's goods or to cause mistake or to deceive as to an affiliation, connection, or association with Sheltered Wings in violation of common law of the State of Wisconsin.

Jury Demand

Sheltered Wings requests a jury trial.

Prayer For Relief

WHEREFORE, Sheltered Wings requests an order and judgment:

- a) Enjoining Wohali, and all other persons participating or acting in concert with them, from use of any mark including the term "EAGLE";
- b) Ordering the impoundment and destruction of any goods bearing the mark STEEL EAGLE or any confusingly similar variant;
- c) Compelling Wohali to provide an accounting of all revenues and profits gained from the acts complained of in this Complaint;

- d) Awarding Sheltered Wings its actual damages and any additional damages that the Court deems just and equitable under the circumstances of the case;
- e) Ordering the cancellation of Trademark Registration No. 3,904,929;
- f) Declaring that trademark application serial numbers 85/464,085 and 85/684,377 are not registrable;
- g) Awarding Sheltered Wings its allowable costs and plus reasonable actual attorneys' fees; and
- h) Awarding Sheltered Wings such other and/or further relief as is just and equitable.

GODFREY & KAHN, S.C.

Date: November 12, 2013

By: s/Jennifer L. Gregor
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Attorneys for plaintiff, Sheltered Wings, Inc.

10423505.2

EXHIBIT A

DISTRICT COURT
FILED

**IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA**

OCT 31 2013

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

WOHALI OUTDOORS, LLC,

Plaintiff,

vs.

SHELTERED WINGS, INC.

Defendant.

JURY TRIAL DEMANDED

CJ-2013 05008
Case No. _____

Judge _____

DANA LYNN KUEHN

PETITION

The Plaintiff, Wohali Outdoors, LLC, ("Plaintiff" or "Wohali"), asserts the following claims and causes of action against the Defendant, Sheltered Wings, Inc. ("Defendant" or "Wings").

JURISDICTION AND VENUE

1. Wohali is an Oklahoma limited liability company with its principal place of business in Tulsa County, Oklahoma.
2. Defendant is a Wisconsin corporation.
3. Defendant has availed itself to the State of Oklahoma and has caused damages to Wohali in the State of Oklahoma.
4. Wohali's damages associated with the relevant facts, actions and circumstances stated below all occurred in the State of Oklahoma.
5. This Court has jurisdiction over Wohali, the Defendant and the subject matter of this action.
6. Venue is proper in the District Court in and for Tulsa County.

STATEMENT OF PRINCIPAL FACTS

7. On January 11, 2011, Wohali's Steel Eagle mark was registered and assigned Registration No. 3,904,929.

8. Subsequently, Defendant applied to the USPTO for the mark "Eagle". The USPTO rejected Defendant's application.

9. Defendant then filed the "Federal Suit"¹ against Wohali seeking (among other things) damages, injunctive relief and the cancellation of Wohali's Steel Eagle mark (Registration No. 3,904,929, referenced above). Defendant has claimed it was not aware of Wohali's Steel Eagle mark until the USPTO examiner identified Wohali's mark in response to Defendant's application to register Eagle.

10. Defendant's Complaint filed in the Federal Suit contained false misrepresentations concerning Defendant's pleaded marks as alleged therein.

11. On May 23, 2011, Wohali filed its Answer and Affirmative Defenses in the Federal Suit.

12. On June 6, 2011, Defendant filed a motion to dismiss the Federal Suit. On July 25, 2011, the District Court dismissed the Federal Suit. Defendant subsequently admitted it no longer wanted to litigate in Federal Court because Wohali was being defended by its insurance carrier.

13. On October 10, 2011, Defendant filed its Petition in Cancellation No. 92054629 before the USPTO ("Cancellation Proceeding"). Defendant moved to cancel Wohali's Steel Eagle mark (Registration No. 3,904,929) based on the alleged existence of five of Defendant's

¹ *Sheltered Wings, Inc. v. Wohali Outdoors, LLC*, Case No. 11-CV-300, U.S. District Court for the Western District of Wisconsin (the "Federal Suit").

pleaded marks. (Wohali denies the validity and existence of each of Defendant's pleaded marks.)

14. On August 24, 2012, Defendant moved to amend its Petition and admitted that as to three of its pleaded marks, Defendant could not maintain any claims.

15. Concerning one of Defendant's pleaded marks, the USPTO rejected Defendant's application. Addressing the USPTO's concerns, Defendant stated that the term "Eagle" with respect to optics is a weak mark. In both the Federal Suit and the Cancellation Proceeding, Defendant has attempted in bad faith to reverse course, and claim otherwise.

16. Defendant has made false representations in an effort to harm Wohali and maliciously interfere with the business of Wohali.

17. On November 3, 2011, Wohali filed another application with the USPTO to register Steel Eagle. The application was assigned Serial No. 85-464,085.

18. On May 16, 2012, Defendant filed a Notice of Opposition (Opposition No. 91205187) before the USPTO and opposed Wohali's application. Defendant's Opposition was filed in bad faith, was malicious and was filed with the purpose to harm Wohali.

19. On July 23, 2012, Wohali filed a separate application with the USPTO to register Steel Eagle. The application was assigned Serial No. 85-684,377. Subsequently, Defendant, in bad faith and in an effort to cause Wohali harm, filed multiple applications for marks with the USPTO, each utilizing the term "Eagle".

20. On January 11, 2013, Defendant filed a second Notice of Opposition (Opposition No. 91208804) against Wohali, and opposed Wohali's application (Serial No. 85-684,377). This Opposition was filed in bad faith, was malicious and was filed with the purpose to harm Wohali.

21. Defendant's principals admitted that Defendant has made false and misleading

statements concerning its pleaded marks at issue before the USPTO. Defendant has interfered with the business relations and expectancy of Wohali. Defendant has made false statements and performed malicious and unjustified acts with the purpose of causing Wohali harm and to unlawfully coerce and extract concessions from Wohali. Defendant has in fact made false representations to other individuals and businesses to coerce and force others to make concessions or cease doing business.

MALICIOUS INTERFERENCE WITH BUSINESS RELATIONS

22. Wohali incorporates by reference as if fully stated herein, all allegations asserted above in paragraphs 1-21. Wohali further incorporates by reference all allegations, claims and counts made in this Petition into each and every other allegation, claim and count of this Petition.

23. Wohali has the right to conduct and prosecute a lawful business without interference from Defendant. Wohali has business relations and an expectancy for which Defendant has interfered.

24. Defendant has interfered with Wohali's right to conduct business with the purpose of causing harm to Wohali.

25. Defendant's actions were intentional and aimed at causing harm to Wohali. Defendant's interference was not justified, privileged or excusable.

26. Defendant has engaged in acts and conduct designed to interfere with and disrupt Wohali's business. Defendant acted intentionally and with malice toward Wohali in interfering with Wohali's business. Alternatively, Defendant acted with reckless disregard for the rights of Wohali.

27. Defendant's actions have caused Wohali damages, namely Wohali's business has been actually interfered with and disrupted, and this harm was directed to and occurred within

Oklahoma. Defendant was aware of these business relations and expectancy. Moreover, Defendant's actions have caused Wohali to hire legal counsel.

28. Wohali has been damaged in an amount to be determined with specificity at trial in an amount greater than ten thousand dollars, and less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. See 12 O.S. § 2008. Alternatively, Wohali seeks nominal damages.

29. Wohali seeks the maximum amount of punitive damages allowed by Oklahoma law and/or pursuant to 23 O.S. §9.1.

INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS

30. Wohali incorporates by reference as if fully stated herein, all allegations asserted above in paragraphs 1-29. Wohali further incorporates by reference all allegations, claims and counts made in this Petition into each and every other allegation, claim and count of this Petition.

31. Wohali has the right to conduct and prosecute a lawful business without interference from Defendant. Wohali has a valid expectancy.

32. Defendant has interfered with Wohali's right to conduct business by filing and pursuing bogus proceedings with the purpose of causing harm to Wohali.

33. Defendant's actions were intentional and aimed at causing harm to Wohali. Defendant's interference was not justified, privileged or excusable.

34. Defendant has engaged in acts and conduct designed to interfere with and disrupt Wohali's business. Defendant acted intentionally and with malice toward Wohali in interfering with Wohali's business. Alternatively, Defendant acted with reckless disregard for the rights of Wohali.

35. Defendant's actions have caused Wohali damages, namely Wohali's business has been actually interfered with and disrupted. Moreover, Defendant's actions have caused Wohali to hire legal counsel.

36. Wohali has been damaged in an amount to be determined with specificity at trial in an amount greater than ten thousand dollars, and less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. See 12 O.S. § 2008. Alternatively, Wohali seeks nominal damages.

37. Wohali seeks the maximum amount of punitive damages allowed by Oklahoma law and/or pursuant to 23 O.S. §9.1.

INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

38. Wohali incorporates by reference as if fully stated herein, all allegations asserted above in paragraphs 1-37. Wohali further incorporates by reference all allegations, claims and counts made in this Petition into each and every other allegation, claim and count of this Petition.

39. Wohali has the right to conduct and prosecute business relations without interference from Defendant.

40. Wohali has a valid expectancy.

41. Defendant had knowledge of Wohali's business relations and expectancy at the time Defendant interfered with same.

42. Defendant has interfered with Wohali's business relations and expectancy, and has caused harm to Wohali.

43. Defendant's actions were intentional and aimed at causing harm to Wohali. Defendant knew that its actions would interfere with Wohali's business and expectancy. Defendant's interference was not justified, privileged or excusable.

44. Defendant has engaged in acts and conduct designed to interfere with and disrupt Wohali's business relations and expectancy. Defendant acted intentionally and with malice toward Wohali in interfering with Wohali's rights. Alternatively, Defendant acted with reckless disregard.

45. Defendant's actions have caused Wohali damages, namely Wohali's expectancy and rights have been actually interfered with and disrupted. Moreover, Defendant's actions have caused Wohali to hire legal counsel.

46. Wohali has been damaged in an amount to be determined with specificity at trial in an amount greater than ten thousand dollars, and less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. See 12 O.S. § 2008. Alternatively, Wohali seeks nominal damages.

47. Wohali seeks the maximum amount of punitive damages allowed by Oklahoma law and/or pursuant to 23 O.S. §9.1.

ABUSE OF PROCESS

48. Wohali incorporates by reference as if fully stated herein, all allegations asserted above in paragraphs 1-47. Wohali further incorporates by reference all allegations, claims and counts made in this Petition into each and every other allegation, claim and count of this Petition.

49. Defendant brought its actions challenging Wohali's Steel Eagle mark and applications, premised on ulterior motives.

50. Defendant commenced these actions and has pursued its claims for an ulterior purpose. In other words, Defendant has used these actions for a purpose for which the process was not designed. The primary objective of Defendant is for a purpose for which the process was not designed.

51. The purpose of these actions was not for the purpose of opposing Wohali's mark and applications, but rather for the ulterior purpose of interfering with the business and contractual relations of Wohali as well as Wohali's expectancy, with the purpose of causing Wohali harm, financial and otherwise.

52. Defendant filed and pursued these actions, not to oppose Wohali's applications, but instead to cause Wohali harm, financial and otherwise.

53. By interfering with and causing harm to Wohali, Defendant intended to harm Wohali to the point of not being able to continue its business. Defendant's actions are intentional and malicious; and not privileged or justified.

54. Wohali has been damaged in an amount to be determined with specificity at trial in an amount greater than ten thousand dollars, and less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. See 12 O.S. § 2008. Alternatively, Wohali seeks nominal damages.

55. Wohali also seeks the maximum amount of punitive damages allowed by Oklahoma law and/or pursuant to 23 O.S. §9.1.

UNFAIR COMPETITION

56. Wohali incorporates by reference as if fully stated herein, all allegations asserted above in paragraphs 1-55. Wohali further incorporates by reference all allegations, claims and counts made in this Petition into each and every other allegation, claim and count of this Petition.

57. There is no justification for Defendant's interference with Wohali's business and contractual relations, nor with Wohali's expectancy. Defendant's acts have interfered with and were and are intended to interfere with Wohali's business.

58. Defendant acted intentionally and with malice toward Wohali. Alternatively, Defendant acted with reckless disregard for the rights of Wohali.

59. Wohali has been damaged in an amount to be determined with specificity at trial in an amount greater than ten thousand dollars, and less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. See 12 O.S. § 2008. Alternatively, Wohali seeks nominal damages.

60. Wohali also seeks the maximum amount of punitive damages allowed by Oklahoma law and/or pursuant to 23 O.S. §9.1.

JURY TRIAL DEMANDED

Wohali hereby demands a Jury Trial on all issues properly triable by Jury.

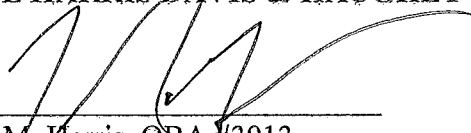
PRAYER

Wohali prays for the following relief:

1. Monetary damages to be determined with specificity at trial in an amount greater than ten thousand dollars, and less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code. See 12 O.S. § 2008. Alternatively, Wohali seeks nominal damages.
2. Punitive damages in the maximum amount allowed by Oklahoma law and/or 23 O.S. §9.1.
3. Injunctive relief to preclude Defendant from continuing to perform unlawful and malicious acts.
4. Attorneys' fees, interest, and all costs and expenses.
5. All other relief to which Wohali is entitled.

Respectfully Submitted,

DOYLE HARRIS DAVIS & HAUGHEY

A handwritten signature in black ink, appearing to be 'S. Harris', written over a horizontal line.

Steven M. Harris, OBA #3913

S. Max Harris, OBA #22166

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